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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,690	09/12/2001	Marinus A. Doornik	AVERP3204US	8567

7590

03/27/2003

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EXAMINER

YUAN, DAH WEI D

ART UNIT

PAPER NUMBER

1745

8

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/954,690

Applicant(s)

DOOMERNIK, MARINUS A.

Examiner

Dah-Wei D. Yuan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.                      6) ☐ Other: .

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**BATTERY TESTER LABEL**

Examiner: Yuan

S.N. 09/954,690

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March 19, 2003

***Election/Restrictions***

1. Applicant's election of Group II, claims 17-23, in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1-16,24-28 are withdrawn from consideration.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 17-23 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for labels including an opening to make contact with the cylindrical can of the battery, does not reasonably provide enablement for all battery power indicator labels. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The opening and contact portion of the label are essential for the operation of the battery power indicator, and therefore should be included in the claim.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The phrase "...a non-metallic pigment that produces the effect of a metallized label" in claim 21 is indefinite because the scope of "produce the effect" in describing the pigment is unclear. For the interest of compact prosecution, claim 21 is examined as reciting "...the indicia layer includes a non-metallic pigment that produce markings and design on the label."

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 17-20,23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey (US 5,760,588).

With respect to claim 17, Bailey teaches a thermochromic battery tester label for a dry-cell battery as shown in Figure 1. The battery tester label (15) generally comprises a laminate or layered assembly having a clear (transparent) film (54), a layer of thermochromic material (24), one or more graphic layers and indicia layer (22,23), a substrate layer (20), an elongated electrically conductive circuit (layer) (18), a pressure sensitive adhesive (16) and a base laminate (30), wherein the thermochromic material and the electrically conductive layer constitute a battery power indicator. See Figure 2. Both the clear film (54) and the substrate layer (20) are considered as base films. Bailey teaches the substrate layer 20 can be made of any desired dielectric polymer material. It is preferable to use a dielectric polymer material that will shrink when assembled on a battery. As shown in Figure 7, the length of the base film is longer than the circumference of the battery when the battery label is wrapped around the battery. The battery power indicator is situated between two portions in the laminated film, i.e., between the film (54) and the base laminate (30) in the battery tester label (15). See Column 3, Line 66 to Column 4, Line 20; Column 8, Lines 54-58.

With respect to claims 18 and 20, the clear film 54 is selected from the materials, such as polyvinyl chloride or polyester. See Column 8, Lines 38-40.

With respect to claims 18 and 19, the substrate layer (20) can be made of any desired dielectric polymer materials, such as polyvinyl chloride, polyethylene and polypropylene. See Column 8, Lines 54-61.

With respect to claim 23, the battery tester label (15) further comprises apertures (openings) 46a and 46b in the base laminate. See Figure 8. They enable contact between

conductive circuit (18) and either a battery terminal or can (2) on the other side of the base laminate (30). See Column 7, Lines 60-66.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (US 5,760,588) as applied to claims 17-20,23 above, and further in view of Gray (US 3,658,611).

Bailey teaches a battery tester label as described above in Paragraph 8. Moreover, Bailey teaches the graphic layer contains decorative ink. See Column 4, Lines 14-15. However, Bailey does not specifically disclose the nature of the decorative ink. Gray teaches the use of a decorative ink or coating as decorative decal. Different decorative inks, including colored, colorless, inorganic pigment and organic pigment, are employed. The inorganic pigments include alumina hydrate, barium sulfate, calcium carbonate, and various metal oxides, i.e., they are all non-metallic compounds. See Column 1, Lines 5-10; Column 4, Lines 47-54. Therefore, it would have been obvious to one of ordinary skill in the art to use a non-metallic pigment on the graphic layer of Bailey, because Gray teaches the non-metallic pigment can be used as a decorative ink to produce markings and design on a substrate.

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11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (US 5,760,588) as applied to claims 17-20,23 above, and further in view of Rackovan et al. (US 6,436,496 B1).

Bailey et al. disclose a battery tester label as described above in Paragraph 8. However, Bailey et al. do not disclose the addition of an outer film bonded to the outer surface of the base film opposite the indicia layer. Rackovan et al. teach multi-layered heat shrink film for a battery comprising (A) a core layer (base film) (12) comprising a copolymer of ethylene or propylene with an alpha olefin, (B) a skin layer (11) on the upper surface of the core layer, wherein the skin layer comprises a polyolefin or polyolefin blend, and (C) a printable layer (indicia) (13). See Figure 1. The use of two shrinkable layers and labels on the battery enables good heat stability, e.g., they don't shrink prematurely, even at temperature approaching 170°F. See Column 3, Lines 31-46. Therefore, it would have been obvious to one of ordinary skill in the art to add an outer film to the thermochromic battery tester label of Bailey, because Rackovan et al. teach the heat stability of the battery label can be improved with the additional layer of film.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dah-Wei D. Yuan whose telephone number is (703) 308-0766. The examiner can normally be reached on Monday-Friday (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (703) 308-2383. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Dah-Wei D. Yuan  
March 20, 2003

A handwritten signature in black ink, appearing to read 'Dahwei Y', with a long horizontal flourish extending to the right.